

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

KIRK ACREY,

Plaintiff,

v.

ZESTOS, and MALATINSKY,

Defendants.

---

Case No. 13-11214

HON. TERRENCE G. BERG

HON. PATRICIA T. MORRIS

**ORDER ADOPTING REPORT AND RECOMMENDATION (Dkt. 27)**

Plaintiff Kirk Acrey, a federal inmate proceeding *pro se*, has filed the instant civil-rights action pursuant to *Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), seeking damages for an alleged denial of medical care that occurred while he was confined at the Federal Correctional Institution in Milan, Michigan.

On June 26, 2013, the Court entered an order of partial summary dismissal, terminating the majority of the initially-named defendants; however, the case was allowed to proceed against Defendants Zestos and Malatinsky. On February 14, 2014, those Defendants filed a motion to dismiss the complaint and, in the alternative, for summary judgment (Dkt. 16). That motion was fully briefed, and on May 6, 2014, the Court referred the case to Magistrate Judge Patricia T. Morris.

This matter is now before the Court on the Magistrate Judge's August 7, 2014 Report and Recommendation (Dkt. 27), recommending that the Court GRANT Defendants' alternative motion for summary judgment

The law provides that either party may serve and file written objections “[w]ithin fourteen days after being served with a copy” of the report and recommendations. 28 U.S.C. § 636(b)(1). The district court will make a “de novo determination of those portions of the report . . . to which objection is made.” *Id.* Where, as here, neither party objects to the report, the district court is not obligated to independently review the record. *See Thomas v. Arn*, 474 U.S. 140, 149-52 (1985). Nevertheless, having carefully reviewed Defendants’ motion, Plaintiff’s response to that motion, and Defendants’ reply, the Court does hereby **ACCEPT** and **ADOPT** Magistrate Judge Morris’ Report and Recommendation of August 7, 2014, as this Court’s findings of fact and conclusions of law.

Therefore, Defendants’ alternative motion for summary judgment on the basis of qualified immunity (Dkt. 16) is **GRANTED**.

**SO ORDERED.**

Dated: September 8, 2014

s/Terrence G. Berg  
TERRENCE G. BERG  
UNITED STATES DISTRICT JUDGE

### **Certificate of Service**

I hereby certify that this Order was electronically submitted on September 8, 2014, using the CM/ECF system; a copy of this Order was also addressed to Plaintiff and mailed to 19403-424 Leavenworth U.S. Penitentiary, Inmate Mail/Parcels, P.O. Box 1000, Leavenworth, Kansas 66048.

s/A. Chubb  
Case Manager